

**SECTION B**  
**REQUIRED CONTRACT PROVISIONS**

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The provisions contained in this section will be incorporated into and be a part of the contract entered into between the Department of General Services (Department) and the successful vendor as a result of this solicitation.

1. **AMENDMENT**

The Contract, embodied in the Contract documents (Blanket Purchase Order), constitutes the entire agreement between the parties hereto, and all other communications between the parties prior to the execution of this Contract, whether written or oral, with reference to the subject matter of this Contract are superseded by the Contract. The Contract may be amended only by written contract modification authorized by the Procurement Officer and approved as required by law.

2. **NON-HIRING OF EMPLOYEES**

No employee of the State of Maryland, or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, will, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland, or any unit thereof.

3. **LAWS TO BE OBSERVED**

- A. The Contractor will keep fully informed of all federal, State, and local laws, ordinances, rules and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. He will at all times observe and comply with all such laws, rules, ordinances, regulations, orders and decrees; he will protect and indemnify the State and its representatives against any such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by himself or his employees, subcontractors or suppliers at any tier. Whenever the Contract documents require the Contractor to comply with provisions of federal, State, or local laws, regulations, ordinances or codes, Contractor must comply whether such laws, regulations, ordinances or codes are expressly incorporated into the Contract or not.
- B. The Contractor must comply with the provisions of the Workers' Compensation Act and federal, State and local laws relating to hours of labor.
- C. The provisions of this Contract shall be governed by the laws of the State of Maryland.
- D. If the Contractor observes that the Contract documents are at variance with any applicable law, ordinance or regulation, he will promptly notify the Procurement Officer, and except as provided in subsection E, any necessary changes will be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice, he will bear all costs arising therefore.
- E. The State is not responsible for the actions, orders or interpretations of federal, county, municipal, or other local officials or representatives respecting the application to the work of federal, State, or local laws, ordinances, regulations or codes. Contractor will not be entitled to additional compensation for unanticipated costs of complying with any such actions, orders or interpretations.

4. **DISPUTES AND CONTRACT CLAIMS**

This Contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2 of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies) regarding resolution of procurement and contract (called disputes.)

5. **NON-DISCRIMINATION IN EMPLOYMENT – AFFIRMATIVE ACTION**

A. Contractor agrees:

- (1) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment;
- (2) to include a provision similar to subsection (1) above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and
- (3) to post and to cause subcontractors to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this section.

B. Contractor will be subject to and will comply with all other requirements of §13-219 of the Procurement Statutes, which are incorporated into and made a part of the Contract.

C. Contractor will comply with all other applicable federal, State, and local laws, regulations and ordinances respecting illegal discrimination and civil rights.

D. Contractor will comply with all requirements of COMAR 21.11.04 (Affirmative Action).

E. The Contractor, subcontractors, and agents of both insofar as possible, will secure labor through the Maryland Job Service of the Maryland Department of Business and Economic Development, except where the Contractor has entered into a collective bargaining agreement under which labor is to be provided by the union. In that case, the Contractor is not required to conform to these provisions unless the Contractor and the union arrange with the Maryland Job Service for referral of such labor as they may mutually agree will be referred. The Contractor will be the sole judge of the competency or fitness and for satisfactory service of any laborer referred to him by the Maryland Job Service.

6. **BID PROPOSAL/AFFIDAVIT - CONTRACT AFFIDAVIT**

Bidders must read, and truthfully execute the Bid/Proposal Affidavit included in the ITB package and should submit it with the bid. The Contract Affidavit included in the bid package must be executed and submitted by the Contractor prior to final award of the Contract. If these affidavits are not included in the bid package, they can be obtained from DGS.

7. **TERMINATION OF CONTRACT FOR DEFAULT**

If the Contractor fails to fulfill its obligation under this Contract properly and on time, or otherwise violates any provision of this Contract, the State may terminate this Contract by written notice to the Contractor. The notice will specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by the Contractor will, at the State's option, become the State's property. The term "damages" as used in this paragraph may include attorney's fees and litigation costs. Termination hereunder, including the determination of the rights and obligations of the parties, will be governed by the provisions of COMAR 21.07.01.11B.

8. **TERMINATION OF CONTRACT FOR CONVENIENCE**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State will determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of this Contract. However, the Contractor will not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, will be governed by the provisions of COMAR 21.07.01.12A(2).

9. **DELAYS AND EXTENSIONS OF TIME**

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages will be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor or his subcontractors and suppliers including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers. Such time extensions will be granted only if the Contractor gives the State written notice of the delay and its cause within five (5) days after the existence of the delay is known or should have been known by the Contractor.

10. **LIQUIDATED DAMAGES**

The Department may deduct from and set-off against any amounts due and payable to the Contractor any back-charges or damages sustained by the Department by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein will be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.

11. **RESPONSIBILITY OF CONTRACTOR**

- A. The Contractor will be responsible for all materials and services required by this ITB unless stated otherwise in the detailed specifications.
- B. Damages or penalties will not be assessed for delays or non-performance where performance of the Contractor's obligations is prevented or delayed by natural disasters, freight embargoes, strikes, fire or acts of God, provided the Contractor notifies the State's contract administrator and/or project manager of such circumstances and the State's contract administrator/project manager reasonably determines that the failure to perform within the specified time was beyond the control and without fault or negligence of the Contractor.
- C. The State will not be bound to accept any substitutions or change in Contract requirements by virtue of approval or acceptance of any submittal, drawing, specification, description, or other document unless the Contractor expressly brings to the State's attention, in writing, contained in the same document in which the substitution or change is proposed, the fact that a substitution or change is proposed. The State will not be bound to a substitution or change documentation in which the substitution or change is somehow referred to, unless the Contractor expressly brings it to the State's attention, in writing, and the State expressly approves the substitution or change, in writing. The State will not be bound to accept any product or service not in accordance with the Contract just because the State made a payment for it.
- D. The Contractor will perform the services with that standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar to the services hereunder.
- E. The Contractor will supervise and direct the work, using his best skill and attention. He will be solely responsible (1) for all services, construction means, methods, techniques, sequences and procedures, (2) for coordinating all portions of the work under the Contract, and (3) to the extent he or his subcontractors or suppliers at any tier design or are required to design any portion of the work, for design. Contractor must aggressively and diligently pursue completion of the Contract within the Contract time.
- F. The Contractor will be responsible to the State for the acts and omissions of his employees, subcontractors and suppliers at any tier, and their agents and employees, and other persons performing any of the work to or for the project.

- G. The Contractor will not be relieved from its obligations to perform the work in accordance with the Contract documents either by the activities or duties of State personnel in the administration of the Contract, or by the performance or nonperformance of inspections, tests or approvals by the State or persons hired by the State.
- H. The Contractor will confine operations at the site to areas permitted by law, ordinances, permits and the Contract documents and will not unreasonably encumber the site with any materials or equipment.

12. **SECURITY PROVISIONS**

All security requirements established by the using agency for its facility will become a part of these specifications; it will be the Contractor's responsibility to comply with any special security provisions established by the State.

13. **DISSEMINATION OF INFORMATION**

- A. During the term of this Contract, the Contractor will not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of the Department of General Services.
- B. The Contractor will indemnify and hold harmless the State and DGS, its officers, agents and employees, from all liability which may be incurred by reason of dissemination, publication, distribution or circulation, in any manner whatsoever, of any information, data, documents, or materials pertaining in any way to this Contract by the Contractor, its agents or employees.

14. **OWNERSHIP OF DOCUMENTS AND MATERIALS**

The Contractor agrees that all documents and materials including, but not limited to reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for it under the terms of this Contract will at anytime during the performance of the services be made available to the State on request by the State and will become and remain the exclusive property of the State upon termination or completion of the services. The State will have the right to use same without restriction or limitation and without compensation to the Contractor other than that provided by this Contract. The State will be the owner for purposes of copyright, patent or trademark registration.

15. **BARRICADES AND WARNING SIGNS**

- A. The Contractor will provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and will take all necessary precautions for the protection of the work and safety of the public.
- B. The Contractor will erect warning signs prior to any place on the project where operations may interfere with the use of the facility by vehicular or pedestrian traffic, and at all other points where the new work crosses or coincides with an existing roadway or traffic lane(s).

16. **CLEANING UP**

The Contractor will at all times keep the work areas, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work will remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the State. On completion of the work, the Contractor will leave the work and premises in a clean, neat and workmanlike condition satisfactory to the State.

17. **NOTICE TO STATE OF LABOR DISPUTES**

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor will immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer.
- B. The Contractor must insert the substance of this clause, including this subsection B, in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract will provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor will immediately notify his next higher tier subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

18. **RETENTION OF RECORDS – AUDITS BY THE STATE**

- A. The Contractor and his subcontractors and suppliers at any tier will retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations whichever is longer, and will make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times.
- B. If the Contractor or his subcontractors or suppliers at any tier fail to retain for the period of time required by this section original documents used, made, or relating to the preparation or calculation of the Contractor's bid to the State or of bids, quotes or estimates of subcontractors or suppliers at any tier, the Contractor will be entitled to no damages, compensation, or equitable adjustments for any claims based on calculations, assumptions, understandings, or beliefs allegedly made at the time of preparation of such bids, quotes, or estimates.
- C. In the event a claim is initiated by either party under Section 4, Contractor and his subcontractors or suppliers at any tier will retain such books, papers, records and other documents until expiration of the aforesaid three-year period or until final, unappealable resolution of the claim, whichever is later.

19. **PERMITS AND LICENSES**

- A. When required by law or the Contract, the State or its authorized representative will file with the appropriate local authority, drawings and specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the Contract documents and he will include the cost of said fees in his base bid. The State will not be responsible for the actions or interpretations of county, municipal, or other local agencies or officials respecting the application of federal, State or local laws, rules, ordinances, regulations, codes, or policies to the work.
- B. The Contractor must be licensed as required by Title 17, Subtitle 6 or Title 8 of the Business Regulation Article, Annotated Code of Maryland, or as otherwise required by law.

20. **INTELLECTUAL PROPERTY**

- A. Contractor agrees to indemnify and save harmless the State, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this Contract.
- B. Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against the State due to such infringement and all attorney's fees and litigation expenses reasonably incurred

by the State to defend against such a claim or suit. The obligations of this paragraph are in addition to those stated in paragraph C below.

- C. If any products furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for the State the right to continue using the applicable item; (2) replace the product with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

21. **SEPARATE CONTRACTS**

- A. The State reserves the right to let other contracts in connection with or adjacent to this work. The Contractor will afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and will properly connect and coordinate his work with theirs. The Contractor is entitled to no overhead, profit, or other compensation for work done for the State by other contractors.
- B. If any part of the Contractor's work depends on proper execution or results of the work of any other contractor, the Contractor will inspect and promptly report to the Department of General Services any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report will constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to the defects which may develop in the other contractor's work after the execution of his work.
- C. To ensure the proper execution of his subsequent work, the Contractor will measure work already in place and will at once report to the Procurement Officer any discrepancy between the executed work and the drawings.

22. **COMPLIANCE WITH LAWS**

The Contractor hereby represents and warrants:

- A. That it is qualified to do business in the State of Maryland, and that it will take such action, as from time to time hereafter, may be necessary to remain so qualified.
- B. That it is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and that it will not become so in arrears during the term of this Contract.
- C. That it will comply with all federal, State and local laws, ordinances and rules and regulations applicable to its activities and obligations under this Contract.
- D. That it will procure, at its expense, all licenses, permits, insurance and governmental approval, if any, necessary to the performance of its obligations under this Contract.

23. **SUBCONTRACTING AND ASSIGNMENT**

The benefits and obligations hereunder will inure to and be binding upon the parties hereto and, except as provided in COMAR 21.05.02.24, neither this Contract nor the services to be performed hereunder will be subcontracted, or assigned, either in whole or in part, except with the prior written consent of the Procurement Officer.

24. **RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The Contractor will be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the services required under this Contract. Further, it is expressly understood that the Contractor will indemnify and save harmless the State, its departments, agencies, units, officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including reasonable attorney's fees and litigation expenses arising

out of or resulting from the negligent performance of the services of the Contractor under this Contract.

25. **TAX EXEMPTION**

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates will be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of this Contract, the Contractor will pay the Maryland Sales Tax and the exemption does not apply. The Contractor bears the risk of determining when the Contractor may be liable for sales or use taxes.

26. **DELIVERY**

Delivery will be made in accordance with contract requirements. The State reserves the right to test any materials, equipment, supplies, or services delivered to determine if the Contract requirements have been met. Except as otherwise may be required by the Contract, materials listed shall be delivered FOB the point or points specified prior to or on the date specified. Any material that is defective or fails to meet the terms of the Contract will be rejected. Rejected materials will be promptly replaced. The State reserves the right to purchase replacement materials in the open market. Vendors failing to promptly replace materials lawfully rejected will be liable for any excess price paid for the replacement, plus applicable expenses, if any.

27. **EPA COMPLIANCE**

Materials, supplies, equipment or services will comply in all respects with the Federal Noise Control Act of 1972, as may be amended, where applicable.

28. **OCCUPATIONAL SAFETY AND HEALTH ACT (O.S.H.A.)**

All materials, supplies, equipment, or services supplied as a result of this Contract will comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

29. **MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATION**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract will be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor will be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State will notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

30. **CONTRACT MODIFICATION CLAUSE**

The Procurement Officer may at any time, by written order designated or indicated to be a change order (contract modification), make any change in the general scope of the Contract. Any other written or oral order (which terms will include any direction, instruction, interpretation or determination) from the Procurement Officer which causes any such change will not be effective as a change order under this provision unless the Contractor gives the Procurement Officer, within five (5) days of the date of receiving such order, written notice stating the date, circumstances and source of the order and stating that the Contractor regards the order as a change order.

Except as herein provided, no order, statement or conduct of the Procurement Officer or any other State representative or employee will be treated as a change or modification under this clause or will entitle the Contractor to an equitable adjustment hereunder. If any change or modification under this provision causes



an increase or decrease in the Contractor's cost of or the time required for the performance of any part of the services under the Contract, an equitable adjustment will be made and the Contract price modified in writing accordingly.

31. **AFFIRMATIVE ACTION**

The Contractor will comply with paragraph A of Article VI of the Governor's Code of Fair Practices, COMAR 01.01.1993.16.

32. **CONFLICT OF INTEREST LAW**

It is unlawful for any State officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he, his spouse, parent, child, brother, or sister, has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, 3-101 et seq of the Annotated Code of Maryland.

33. **PAYMENT AND INTEREST**

- A. The provisions of §§15-101 through 15-105 of the Procurement Statutes and COMAR 21.07.01.18, respecting payment to the Contractor and interest on late payments, are incorporated into and made a part of the Contract.
- B. A proper invoice or requisition will include a description of items or services provided; the date the goods were received by the ordering agency/department or the inclusive dates the services were rendered; the price agreed on pursuant to the Contract; the basis for the billing; the purchase order or Contract identification number; the Contractor's Federal Employers Identification Number or Social Security Number; and the name and address of the proper invoice recipient for the state agency, as specified in the Contract.
- C. For purposes of this Contract, an amount will not be deemed "due and payable" and interest payments will not be authorized for late payments unless the following conditions have been met:
  - (1) The amount invoiced is consistent with the amount agreed upon by the parties to the Contract pursuant to the contractual agreement.
  - (2) The goods and/or services have been received by the State and the quantity received agrees with the quantity ordered.
  - (3) The goods and/or services meet the qualitative requirements of the Contract and have been accepted by the State.
  - (4) The proper invoice has been received by the party or unit of government specified in the agreement.
  - (5) The invoice is not in dispute.
  - (6) If the Contract provides for progress payments, the proper invoice for the progress payment has been submitted pursuant to the approved schedule of values.
  - (7) All conditions for release of retainage have been met.

34. **CONTRACT DOCUMENTS**

- A. The Contract documents are complementary. That which is called for by any one shall be as binding as if called for by all.

- B. The intent of the Contract documents is to include in the scope of the Contract, at no additional cost to the State, all work necessary for proper completion of the project ready for continual efficient operation and not to include any work not properly inferable.
- C. Clarification: Prior to bidding, the Contractor should obtain clarification of all questions which may have arisen as to intent of the Contract documents, or any actual conflict between two or more items in the Contract documents. Should the Contractor have failed to obtain such clarification, then the Procurement Officer may direct that the work proceed by any method indicated, specified or required, in the judgment of the Procurement Officer, by the Contract documents. Such direction by the Procurement Officer shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that he had the opportunity to request clarification prior to submitting his bid to the State and that he is not entitled to claim extra costs as a result of failure to receive such clarification.
- D. Jargon: Work described in words that have a well-known technical or trade meaning will be held to refer to such recognized standard use.
- E. Only written addenda or instructions issued by the Procurement Officer are binding on the State. If the Contractor is not satisfied with the addendum clarification or instructions issued by the Procurement Officer, Contractor must demand and receive a written addendum from the Procurement Officer; and, if one is not issued, Contractor must timely file a protest. The bidder must acknowledge the receipt of all addenda in the bid.

35. **USE OF CONTRACTOR'S FORMS NOT BINDING ON STATE**

The bidder may not substitute, modify or provide any other document in lieu of any of the documents provided with this bid. Only those forms and documents provided with the solicitation and by the Procurement Officer will be considered acceptable as bid submissions.

36. **SUSPENSION OF WORK**

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State. (See also Paragraph 9, Delays and Extensions of Time.)

37. **PRE-EXISTING REGULATIONS**

In accordance with the provisions of §11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

38. **ELECTRONIC FUNDS TRANSFER**

**Electronic Funds Transfer:** This provision referring to Electronic Funds Transfer applies to contracts of over \$200,000. Electronic funds transfer will be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption. By submitting a response to this solicitation, the Bidder or Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. After award of a contract, the selected bidder or offeror shall register with the Comptroller of Maryland using the forms required by the Comptroller. For further information go to:

**<http://compnet.comp.state.md.us/gad/vendorinfo/efit/default.asp>**

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

39. **COST AND PRICE CERTIFICATION**

- A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
1. A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer, or
  2. A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.
- B. The price under this Contract and any change order or modification hereunder, including profit or fee, will be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

40. **PAYMENTS WITHHELD**

- A. The State may withhold payment or, on account of subsequently discovered evidence, nullify or reduce the whole or part of any certificate or payment on account of:
- (1) the cost (measured by the Contract value or fair market value, whichever is greater) of Completing unfinished or defective work not remedied or deductions or amounts due the State under the Contract;
  - (2) failure of the Contractor to perform any material Contract requirement;
  - (3) claims filed or likely to be filed against the State for which the Contractor may be liable to the State;
  - (4) failure of the Contractor to make payments properly to subcontractors or suppliers for material or labor or amounts claimed by the Contractor's surety or insurer under any right of subrogation;
  - (5) damage to another contractor;
  - (6) liquidated damages or other damages or compensation due or claimed by the State for claims of the State against the Contractor;
  - (7) any claim of the State or debt owed to the State arising from any other cause.

41. **UNAUTHORIZED WORK**

The Contractor shall not be paid for any work outside the scope of the Contract not authorized in writing by the Procurement Officer.

42. **REMOVAL OF DEFECTIVE WORK**

- A. All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, design error or omission by the Contractor or his subcontractors and suppliers at any tier, or any other cause, will be promptly removed and replaced by work and materials which will conform to the Contract requirements or shall be remedied otherwise in an acceptable manner authorized by the Procurement Officer.

- C. Upon failure on the part of the Contractor to comply promptly with the provisions of this section, the State will have authority to cause defective, unauthorized, or unacceptable work to be remedied, removed, or replaced at the Contractor's expense.

43. **STATE'S RIGHT TO DO WORK**

If the Contractor fails to prosecute the work properly or diligently or fails to perform any provision of the Contract, the State may make good such deficiencies at the Contractor's expense, or terminate the Contract for default or both or exercise any other remedy available to the State under the Contract.

44. **NO WAIVER OF RIGHTS -- STATE'S REMEDIES CUMULATIVE -- STATE'S DAMAGES**

- A. The State will not be precluded or stopped by any measurement, estimate, change order, Contract modification, certificate of payment, or payment from showing the true amount and character of the work furnished by the Contractor, or from showing that any measurement, estimate, change order, Contract modification, certificate of payment, or payment is untrue or was incorrectly made, or from showing that the work does not in fact conform to the Contract. The State may recover from the Contractor or his sureties, or both, such damages, loss, or additional expense incurred as a result of any such error in measurement, estimate, change order, Contract modification, certificate of payment, or payment as a result of such failure to conform to the Contract. The State's rights in this respect will not be waived or barred by any inspection, acceptance or approval of the work, or by payment therefore, or by granting an extension of time, or by taking possession, or by execution of a change order based on the erroneous measurement, estimate, or change order, Contract modification, certificate of payment, or payment.
- B. The activities of State personnel and those acting for the State's benefit or on its behalf respecting this Contract, including inspection of the work, review of submittals, monitoring of progress, and so forth are for the benefit of the State only and are not for the benefit of the Contractor. The State's failure to bring to the attention of the Contractor deficiencies in the work or the Contractor's performance will not constitute waiver or excuse of the Contractor's failure to comply strictly with Contract requirements.
- C. The waiver by the Procurement Officer of any breach of Contract by the Contractor shall not operate as a waiver of any other or subsequent breach.
- D. The rights and remedies of the State and the obligations of the Contractor under various provisions of the Contract documents and under provisions of applicable law are cumulative and not exclusive.
- E. For any claim or cause of action accruing to the State as a result of or arising out of this Contract, the State may collect damages of any kind, including consequential damages and damages for purely economic loss.

45. **PERFORMANCE EVALUATIONS**

- A. The Department will perform for the benefit of itself and other State agencies evaluations (interim and/or final) of the performance of the Contractor and subcontractors and suppliers.
- B. Performance evaluations may be used or reviewed by a Procurement Officer in the course of making a determination of responsibility under other procurements.
- C. Unsatisfactory performance of this Contract (or any part of it), whether or not the Contract is terminated for default and whether or not an unsatisfactory report (interim or final) is issued, may result in a determination that the Contractor is not a responsible bidder or offeror under COMAR 21.06.01.01.
- D. Nothing in this Contract shall be construed to limit or qualify the authority of a Procurement Officer under the Procurement Statutes or COMAR Title 21.

46. **ASSIGNMENT OF ANTITRUST CLAIMS**

The Contractor sells, transfers and assigns to the State of Maryland all rights, title and interest of, in and to any causes of action arising at any time before the date of this assignment or during the performance of this Contract under the antitrust laws of the United States, including Section 1 of the Sherman Act, and the antitrust laws of Maryland relating to the purchase by Contractor or the State of Maryland of any products from any supplier or source whatever that is incorporated in the terms of this Contract. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

47. **FEDERAL PARTICIPATION**

When the United States government pays all or any portion of the cost of a project, the work may be subject to inspection by federal agencies. Such inspection will in no sense make the federal government a part to this Contract.

48. **STATE PROPERTY NOT SUBJECT TO LIEN**

Neither the Contractor nor any subcontractor or supplier at any tier may have or acquire any lien against State property.

49. **STATE NOT SUBJECT TO LIMITATIONS**

The State is not bound by laches or any statute of limitations or repose, and Contractor may not assert laches, limitations, or a statute of repose as a defense against any claim or action brought by the State.

50. **AWARD OF ALTERNATES**

If alternates are solicited in the ITB Form, one or more alternates may be awarded in the discretion of the Department provided that in the event the State lacks funds for award of the base bid and any succeeding alternate, the State in its discretion may forego the award of the alternate for which funds are not available but may award one or more succeeding alternates for which funds are available. Unless other provisions of the Contract documents provide otherwise, a Contract will be awarded to the responsible bidder submitting the lowest responsive total bid (or evaluated bid) including base bid and all alternates awarded by the State.

51. **FAILURE TO EXECUTE CONTRACT**

Failure of the Contractor to execute the Contract and file acceptable bonds (if required) within the time provided will be just cause for the State to act upon the bid bond or other securities at an amount equal to the increased Contract price paid by the State as a result of the Contractor's failure to execute the Contract.

52. **UNIT PRICES**

Should the Contractor be required to perform work over and above that required by the Contract documents, or should the Contractor be ordered to omit work required by the Contract documents, an equitable adjustment will be made to the Contract price. In determining the amount of any such extra to the Contractor which is governed by unit prices, the amount of the extra will be the unit price bid by the Contractor or a reasonable price, whichever is less. In determining the amount of any such credit due the State which is governed by unit prices, the amount of the credit will be the unit price bid by the Contractor or a reasonable price, whichever is greater. Unit prices quoted will be the same for extra work and for credit work and shall be the sum total compensation payable or creditable for such items of work, including all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc. The Procurement Officer will issue one or more Contract modifications to authorize any such additions or deletions of work.